

**BEFORE THE PUBLIC UTILITIES COMMISSION OF
THE STATE OF CALIFORNIA**



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Order Instituting Rulemaking on the
Commission's Own Motion to Assess and Revise
The Regulation of Telecommunications Utilities.

Rulemaking 05-04-005
(Filed April 7, 2005)

Rulemaking for Purposes of Revising General Order
96-A Regarding Informal Filings at the Commission.

Rulemaking 98-07-038
(Filed July 23, 1998)

**RESPONSE OF VERIZON CALIFORNIA INC. (U 1002 C) OPPOSING THE
APPLICATION FOR REHEARING OF DECISION (D.) 07-09-018 FILED BY
TURN AND CONDITIONALLY SUPPORTING THE APPLICATION FOR
REHEARING BY COX**

Pursuant to Rule 16.1(d) of the Commission's Rules of Practice and Procedure, Verizon California Inc., on behalf of itself and its certificated California affiliates (collectively "Verizon"),¹ submits this Response Opposing the Application for Rehearing filed by TURN on October 12, 2007. TURN limits its rehearing request to one issue, *i.e.*, the Commission's decision in D.07-09-018 to bar intervenors from protesting individual advice letters that would allegedly result in "unjust, unreasonable, and discriminatory" price changes under URF.² As shown below, the Commission's decision to bar such price-related protests is both lawful and well supported by the record in this proceeding. TURN's rehearing request, therefore, should be denied. Verizon also addresses Cox's separate application for rehearing below.

¹ These affiliates include Bell Atlantic Communications, Inc., d/b/a Verizon Long Distance (U-5732-C), NYNEX Long Distance Company d/b/a Verizon Enterprise Solutions (U-5658-C), MCI Communications Services, Inc., d/b/a Verizon Business Services (U-5378-C), MCI Metro Access Transmission Services, d/b/a Verizon Access Transmission Services (U-5253-C), TTI National, Inc., d/b/a Verizon Business Services (U-5403-C), Teleconnect Long Distance Services & Systems Company, d/b/a Telecom*USA (U-5152-C), Verizon California Inc. (U-1002-C), and Verizon Select Services Inc. (U-5494-C).

² See TURN application for rehearing of D.07-09-018 (Oct. 12, 2007).

GENERAL RULE 7.4.2 OF GENERAL ORDER 96-B BARS ADVICE LETTER PROTESTS THAT SEEK TO RELITIGATE THE COMMISSION'S PHASE 1 DECISION TO ELIMINATE PRICE REGULATION FOR URF CARRIERS.

In its application for rehearing, TURN erroneously claims “no legal basis” for the Commission’s decision to prohibit intervenors from protesting individual advice letters that would allegedly result in “unjust, unreasonable, and discriminatory” price changes under URF.³ TURN is clearly wrong. As the Commission explained in response to TURN’s similar comments on the proposed decision, the plain language of General Rule 7.4.2 of General Order 96-B bars protests that “would require relitigating a prior order of the Commission.”⁴ Since the Commission’s Phase 1 order eliminated most price regulation of URF carriers,⁵ the Commission held that price-related protests would be improper under General Rule 7.4.2:

To the extent that the Commission has eliminated price regulation, the Commission’s determination to do so may not be relitigated by means of protesting an advice letter.⁶

Indeed, as the Commission itself explained in adopting General Rule 7.4.2:

Where the Commission does not regulate the rates of a specific type of utility, an advice letter submitting a rate change by a utility of the specified type is not subject to protest on the grounds that the rates are unjust, unreasonable, or discriminatory.⁷

³ See TURN application for rehearing of D.07-09-018 (Oct. 12, 2007).

⁴ General Rule 7.4.2 states, in pertinent part:

An advice letter may be protested on one or more of the following grounds: * * *

(6) The relief requested in the advice letter is unjust, unreasonable, or discriminatory, provided that such a protest may not be made where it would require relitigating a prior order of the Commission.

⁵ D.06-08-030, mimeo at 275, Conclusion of Law 24 (emphasis added), *affirmed on rehearing* by D.06-12-044, mimeo at 15, *review denied*, Court of Appeal of the State of California, First Appellate District, Division Two No. A116460 (May 18, 2007).

⁶ D.07-09-018, mimeo at 81.

⁷ D.07-09-018, mimeo at 21, 28, *quoting* G.O. 96-B, General Rule 7.4.2, Example 2, *adopted in* D.07-01-024. Decision 07-01-024 was issued in January of this year, and no party sought to rehear it. Accordingly, the decision is binding Commission precedent. Moreover, General Rule 7.4.2, Example 2 is *identical* to the prior rule under G.O. 96-A. See D.05-01-032, THIRD INTERIM OPINION ADOPTING CERTAIN REQUIREMENTS REGARDING ADVICE LETTER FILING, SERVICE, SUSPENSION, AND DISPOSITION (Jan. 13, 2005), mimeo at A-9. Indeed, there has been no

TURN's claim that the Commission's decision to bar such protests lacks a legal basis, therefore, is clearly wrong and should be rejected.

TURN next attempts to evade General Rule 7.4.2 by claiming that it is "improper to suggest that the Commission does not regulate [URF carriers'] rates."⁸ The plain language of the Commission's Phase 1 decision, however, shows TURN to be clearly wrong. In that decision, the Commission exhaustively examined its statutory duties and determined that the overwhelming record evidence of competition in California not only permits, but compels, a reliance on competition to ensure just and reasonable prices:⁹

Since Verizon, AT&T, SureWest, and Frontier lack market power in their service territories, *price regulation* is no longer needed to ensure that their prices are just and reasonable. Such *price regulations should be removed*.¹⁰

change in policy from G.O. 96-A to G.O. 96-B on this issue; the Commission has consistently barred such advice letter protests, as the Commission explained in 2005:

A protestant may not make "policy" arguments as a way to indirectly attack prior Commission determinations; however, a protest may properly allege that the utility in its advice letter has misapplied established policy. We have modified our list of protest grounds to make this point more clearly. Also, we add the following sentence to Rule 4.2: "A protest may not rely on policy objections to an advice letter where the relief requested in the advice letter follows rules or directions established by statute or Commission order applicable to the utility." (*Id.*, mimeo at 26.)

⁸ TURN Application for Rehearing at 9. TURN neglects to mention that the Commission explicitly addressed TURN's identical argument in its comments on the Proposed Decision. See D.07-09-018 at § 7.9.4, pp. 81 ("It is true that Ordering Paragraph 5 [of the URF Decision] does not eliminate all price regulation. We were careful to note in our earlier discussion some of the various ways that URF advice letters remain subject to protest under GO 96-B [Internal citation omitted.] To the extent that the Commission has eliminated price regulation, the Commission's determination to do so may not be relitigated by means of protesting an advice letter.")

⁹ D.06-08-030, mimeo at 33. See generally *id.* at § V.B.5 (documenting record evidence of intra- and intermodal competition as basis for ensuring "just and reasonable" prices) and § III.A (analyzing federal and state statutes requiring regulators to rely on competition whenever possible to achieve public policy goals).

¹⁰ D.06-08-030, mimeo at 275, Conclusion of Law 24 (emphasis added), *affirmed on rehearing* by D.06-12-044, mimeo at 15, *review denied*, Court of Appeal of the State of California, First Appellate District, Division Two No. A116460 (May 18, 2007).

This URF finding was explicitly upheld on rehearing:

[W]e have accumulated a substantial record in this proceeding to support our conclusion that *price regulation is not required* to ensure that prices are just and reasonable under the law.¹¹

And TURN's attempt to overturn the URF decision by petition for a writ of review in the Court of Appeal was summarily rejected.¹² TURN's attempt to rewrite the history of this proceeding should be rejected.

THE RECORD SUPPORTS THE COMMISSION'S DECISION TO BAR PRICE-RELATED PROTESTS TO INDIVIDUAL ADVICE LETTERS.

TURN next claims the Commission made "no attempt" to explain why price-related protests to individual advice letters should be barred.¹³ Again, TURN is wrong. In rejecting DRA and TURN's comments on the record below, the Commission explained that that the prospect of such protests would distort the fast-paced, competitive process:

The reason the Commission must be able to suspend a tariff filing, according to DRA, is that "[r]egardless of the pricing flexibility granted to the four largest carriers in California, the Commission must still ensure that rates are just and reasonable." This assertion by DRA suggests that DRA rejects or misunderstands the findings of our Phase 1 decision regarding the competitive telecommunications marketplace in California. In a competitive marketplace, the rates of the market participants are disciplined by each other's offerings.¹⁴

Accordingly, the Commission determined that the Tier 1 process articulated in General Order 96-B was the appropriate vehicle for reviewing most price changes

¹¹ D.06-12-044, mimeo at 15 (emphasis added), *review denied*, Court of Appeal of the State of California, First Appellate District, Division Two No. A116460 (May 18, 2007).

¹² *Id.*

¹³ TURN Application for Rehearing at 11.

¹⁴ D.07-09-018, mimeo at 27–28.

under URF¹⁵ because it would allow the market to function without needless delays:

Accordingly, Tier 1 advice letters are especially suitable for partly or fully deregulated industries. In competitive conditions, market participants must be able to act quickly.¹⁶

Contrary to TURN's claim, therefore, the Commission has clearly articulated on the record why price-related protests to individual advice letters should be barred. TURN's claim to the contrary is wrong and should be rejected.

THE PUBLIC UTILITIES CODE SUPPORTS THE COMMISSION'S DECISION TO BAR PRICE-RELATED PROTESTS TO INDIVIDUAL ADVICE LETTERS.

TURN's final claim is that the Commission lacks the statutory authority to prohibit price-related protests to advice letters under Public Utilities Code sections 451 and 453. Again, TURN is wrong. Public Utilities Code section 454(b) explicitly provides the Commission the authority to:

adopt rules it considers reasonable and proper for each class of public utility providing for the nature of the showing required to be made in support of proposed rate changes, the form and manner of the presentation of the showing, with or without a hearing, and the procedure to be followed in the consideration thereof.

In addition, Public Utilities Code section 701 provides the Commission with broad authority to:

supervise and regulate every public utility in the State and may do all things, whether specifically designated in this part or in addition thereto, which are necessary and convenient in the exercise of such power and jurisdiction.

These statutes provide ample authority for the Commission to adopt the Tier 1 advice letter rules discussed above consistent with its Phase 1 decision that "price regulation is no longer needed to ensure that ... prices are just and

¹⁵ D.07-09-018, mimeo at 19, note 35 ("Tier 1 procedures provide carriers flexibility because Tier 1 advice letters are effective upon filing, and because they are already in effect, they may not be suspended")

¹⁶ D.07-09-018, mimeo at 19.

reasonable”¹⁷ given “high levels of telecommunications competition”¹⁸ in California. None of the cases TURN cites actually supports the proposition that intervenors should be allowed the opportunity to relitigate this decision over and over again in the context of individual advice letter filings.

TURN is also wrong to claim that the Legislature “d[id] not contemplate”¹⁹ that the Commission would use its statutory authority to prohibit intervenors from price-related protests of individual advice letter filings under sections 451 and 453. On the contrary, the California Senate Rules Committee specifically analyzed this issue in the context of detariffing and found that most tariffing requirements could be eliminated altogether because “competition ensures that rates are reasonable”:

Where markets are fully competitive the need to approve rates and require filed rates diminishes. Competition ensures that rates are reasonable. ... Once the telephone corporation has been exempted from the filing requirement it may then freely change the rates, terms, and conditions under which it offers the service. By relieving the telephone corporation from the requirement to file rates, we have deleted the mechanism by which the PUC ensures that any rate change is fair and reasonable. Competitors or consumers who believe the rate is unreasonable or discriminatory must then use the PUC's complaint procedures to have their concerns dealt with.²⁰

The prohibition of substantive protests under sections 451 and 453 is thus consistent with Legislature’s own detariffing analysis and should be upheld. For the reasons set forth above, TURN’s application for rehearing should be denied.

¹⁷ D.06-08-030, mimeo at 275, Conclusion of Law 24 (emphasis added), *affirmed on rehearing* by D.06-12-044, mimeo at 15, *review denied*, Court of Appeal of the State of California, First Appellate District, Division Two No. A116460 (May 18, 2007).

¹⁸ D.07-09-018, mimeo at 17–18.

¹⁹ TURN Application for Rehearing at 12.

²⁰ See Senate Rules Committee Legislative Analysis of AB 828 (Conroy) (Aug. 30, 1995) available at <http://www.leginfo.ca.gov/pub/95-96/bill/asm/ab_0801-850/ab_828_cfa_950830_151626_sen_floor.html>. AB 828 is codified in Pub. Util. Code § 495.7.

**COX'S REHEARING APPLICATION SHOULD BE GRANTED ON THE
CONDITION THAT IT IS APPLIED IN A COMPETITIVELY NEUTRAL MANNER
FOR ALL URF CARRIERS, INCLUDING ILECs AND CLECs.**

Cox correctly points out what appears to be an unintended error in the underlying decision requiring Tier 3 advice letter filing for more restrictive changes to terms and conditions of basic service.²¹ Both Verizon and AT&T sought clarification as to the proper tier to file changes to basic service *prices* after the price freeze set forth in D.06-08-030 expires on January 1, 2009.²² In response, the Commission deferred the price issue to the High Cost Fund-B rulemaking, R.06-06-028, but added the requirement that more restrictive changes to the *terms and conditions* of basic service must be filed under Tier 3 even though the terms and conditions of basic service are not at issue in R.06-06-028.²³

This added requirement lacks record support and is inconsistent with the Commission's competitive findings in URF Phase 1 that the communications market is highly competitive throughout the traditional service territories of the four largest incumbents in California.²⁴ Instead, all URF Carriers, including ILECs and CLECs, should be allowed to make changes to the terms and conditions of basic service in the same manner that they are permitted to make such changes to other services, i.e., by Tier 1 advice letter filing. Changes resulting in more restrictive terms and conditions would still require 30 days' advance notice to affected customers under the existing rules.²⁵

²¹ See Cox application for rehearing of Decision 07-09-018 at 6.

²² See, e.g., D.07-09-019, mimeo at 57–58.

²³ See *id.*; see also D.07-09-018, mimeo at 76. In its recently issued interim High Cost Fund-B decision, the Commission affirmed its intention to lift the price freeze as of January 1, 2009 and thereafter to phase in permissible price increases in a manner to be determined. Upon the conclusion of the phase in, the ILECs “shall be granted full flexibility to adjust basic rates.” See D. 07-09-020 at Ordering Paragraphs 7, 8.

²⁴ D.06-08-030, mimeo at 275, Conclusion of Law 24 (emphasis added), *affirmed on rehearing* by D.06-12-044, mimeo at 15, *review denied*, Court of Appeal of the State of California, First Appellate District, Division Two No. A116460 (May 18, 2007). See also D.07-09-018, mimeo at 17–18 (“High levels of telecommunications competition compel us to relax outdated ‘command and control’ style regulation in many areas.”).

²⁵ See D.06-08-030 at Ordering Paragraph 9.

Contrary to Cox's suggestion that the Commission could "theoretically" support retaining Tier 3 treatment for the ILECs only,²⁶ the Commission should apply the same rule to all URF Carriers, including ILECs and CLECs, consistent with the OIR's goal of competitive neutrality and the Commission's own Phase 1 analysis of the large body of state and federal law instructing regulators to be competitively neutral in their policymaking²⁷ and to rely on competition whenever possible to promote consumer welfare, investment, innovation, and further competitive growth.²⁸

Date: October 29, 2007

Respectfully submitted,



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²⁶ Cox application for rehearing of Decision 07-09-018 at 6.

²⁷ See D.06-08-030, mimeo at § III.B, citing, e.g., Pub. Util. Code §§ 871,7(d), 882(c)(2), 709(c) and 47 U.S.C. § 157(a).

²⁸ See *id.* at § III.A, citing, e.g., Pub. Util. Code §§ 709, 8281(a), 47 U.S.C. §§ pmbl., *Qwest Communs., Inc. v. City of Berkeley*, 433 F.3d 1253, 1255 (9th Cir. 2006) (declaring the purpose of the Telecommunications Act of 1996 "was to reduce regulation of telecommunications providers by creating a 'procompetitive, deregulatory national policy framework'" (quoting H.R. Rep. No. 104-458 (1996) (Conf. Rep.)).

CERTIFICATE OF SERVICE

I hereby certify that: I am over the age of eighteen years and not a party to the within entitled action; my business address is 112 Lakeview Canyon Road, Thousand Oaks California 91362; I have this day served a copy of the foregoing,

RESPONSE OF VERIZON CALIFORNIA INC. (U 1002 C) OPPOSING THE APPLICATION FOR REHEARING OF DECISION (D.) 07-09-018 FILED BY TURN AND CONDITIONALLY SUPPORTING THE APPLICATION FOR REHEARING BY COX

by electronic mail to those who have provided an e-mail address and by U.S. Mail to those who have not, on the attached service lists (R.05-04-005/R.98-07-038).

I declare under penalty of perjury that the foregoing is true and correct.

Executed this October 29, 2007 at San Francisco, California.

/s/ Thomas Bird
THOMAS BIRD

CALIFORNIA PUBLIC UTILITIES COMMISSION

Service Lists

Proceeding: R0504005 - CPUC - PAC BELL, VER

Filer: CPUC - FRONTIER COMMUNICATIONS OF CALIFORNIA

List Name: INITIAL LIST

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